

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT BUNGOMA

CIVIL SUIT NO. 85 OF 2011

EDWIN WAFULA BARASA.....PLAINTIFF

VERSUS

MORRIS MASAI ONZEE.....DEFENDANT

JUDGMENT

[1]. The plaintiff in this case claims that the defendant is the registered owner of W. Bukusu/S. Mateka/2530 and that he was wrongfully so registered. He states that the said land was a subdivision of land parcel W. Bukusu/South Mateka/528 whose first registered owner was the plaintiff's grandfather Lupao Oteu. That when Lupao Oteu died Bonface Khisa Lupao became the administrator of his estate and he subdivided parcel 528 into parcels 2529 and 2930. The plaintiff avers that the said Khisa Lupao subdivided parcel W. Bukusu/S. Mateka/2529 into parcels 2885 and 2887. The plaintiff further avers that parcels W. Bukusu/S. Mateka 2530 of about four acres was supposed to be for the family of the plaintiff. However the said Khisa Lupao sold the same to the defendant herein. He avers that his family was in occupation.

[2]. The plaintiff avers that the defendant admitted that he was wrongfully registered as owner of the said land. He admitted that the plaintiff is the owner of the same and that he agreed to transfer the same to the plaintiff. That he has subsequently refused to transfer the same to the plaintiff.

[3]. The plaintiff prays for an injunction to issue restraining the defendant by his agents and/or servants, from selling alienating, cultivating and/or in any other way from impairing the plaintiff from enjoying the use of the said land.

[4]. The defendant after he was served with pleadings filed a defence and a counterclaim which were later struck out by the court on 14/10/2015 for not complying with court orders.

[5]. The plaintiff fixed his case for formal proof on 6/3/2017. The defendant's lawyer Mr. Ateya who had earlier gone out of the record was allowed to come back on record at the formal proof stage and he took part in the proceedings. The plaintiff explained how land parcel W. Bukusu/S. Mateka/528 which had earlier belonged to his grandfather was subdivided into parcels 2529 and 2530 and how land parcel 2529 was further subdivided into parcel 2885, 2886 and 2827 by his uncle Khisa Lupao. He produced the green cards of all those parcels. He said that land parcel 2530 was not subdivided and that he had lived on the said land parcel all his life. He said that the Land now is in the name of Morris Masai the defendant herein. That he purchased the same from Boniface Lupao Khisa. The witness said that he learnt that his land was sold on 7/12/2010. That he filed a case in the Bumula Land Disputes Tribunal who made a ruling that the plaintiff did not live on the land and that he appealed to the Western Province Land Disputes Appeals Tribunal which ruled that the parties were to retain the boundaries in respect of W. Bukusu/S. Mateka 528. He said that the defendant was to get land from parcel 2887 of two acres and that he was to be given one acre later so he agreed to transfer the suit land to the plaintiff. This was an agreement of 17/10/2010. That when the defendant was not given the one extra acre he refused to transfer the suit land parcel 2530 to the plaintiff.

[6]. The plaintiff's claim was not opposed by the defendant. Indeed, the documents produced by the plaintiff show that he had actually agreed to transfer the said land to the Plaintiff. I am convinced on the

balance of probabilities that the Plaintiff has proved his case. I enter Judgment as prayed with costs. For the avoidance of doubt the defendant shall transfer land parcel W. Bukusu/S. Mateka/2530 to the plaintiff within 30 days. If he does not do so within the time stated, he shall pay the costs of this suit.

Judgment read in open court in the presence of Mr. Anwar and the Plaintiff.

DATED at BUNGOMA this 30th day of March, 2017.

S.N. MUKUNYA

JUDGE.

In the presence of:

Court Assistant - Gladys/ Joy

Mr. Anwar for the Plaintiff

Mr. Ateya for the defendant